

**Remarks**

This paper is responsive to an Office action mailed May 19, 2003. That action indicated that the drawings included with the original application were approved by the Office Draftsperson. No objections were made to the form or content of the specification.

Claims 5 and 10 were objected to as being multiple dependent claims which failed to refer to other claims in the alternative only. Claim 5 has been amended to conform to Office requirements. Claim 10 has been canceled.

Claim 1 was rejected under 35 USC 103(a) as being unpatentable over US patent 5,864,483 (Brichta) in view of US patent 6,272,110 (Tunicliffle). Claim 1 has been amended to incorporate the subject matter of previously dependent claims 2 and 3, both of which are now canceled. The following discussion, while referencing amended claim 1, will be of the rejection applied to original claim 3. That rejection, based on 35 USC 103(a), stated that the claim was considered unpatentable over Brichta in view of Tunicliffle in further view of US patent 5,884,175 (Aras).

Amended claim 1 is believed to define patentable subject matter over any possible combination of the teachings of Brichta, Tunicliffle and Aras because the primary reference (Brichta) fails to teach or suggest the invention defined in the claim and the secondary references (Tunicliffle and Aras) to nothing to overcome the deficiencies of the primary reference.

Amended claim 1 recites a method of monitoring network performance which includes a step of obtaining samples of a performance-defining metric. An entire set of samples is analyzed to determine whether the set satisfies predetermined criteria. The set of samples is used in determining a trend in service only if the set satisfies the predetermined criteria. If the set fails to meet the criteria, the entire set is discarded and no effort is made to determine a trend in service.

Brichta neither teaches nor suggests analyzing a set of samples to determine whether the entire set meets predetermined criteria. What Brichta teaches (at column 7, line 65 through column 8, line 12) is that "detailed services information 20 for occurrences not falling within the

defined danger zone is discarded and only descriptive statistical information 21 is maintained for an appropriate period of time. What Brichta refers to as "descriptive statistical information" is what Applicants refer to as "samples". Note that Brichta specifically teaches that the descriptive statistical information is retained even if the related detailed services information is discarded. Thus, Brichta neither teaches nor suggests the step of determining whether an entire set of samples meets predetermined criteria nor the step of making a trend determination if an entire set fails to meet the criteria.

Applicants are aware that Brichta was not cited alone, but rather in combination with Tunnicliffe and Aras. A reading of these references shows that neither teaches nor suggests the steps discussed above in amended claim 1.

Claim 4 is now dependent on claim 1 and is believed to be patentable for the same reasons as claim 1. Moreover, claim 4 specifically recites a step of analyzing a set of samples to determine whether the standard deviation of the set is greater than a predetermined percentage of the mean of the set of samples. This step is neither taught nor suggested in Brichta or the secondary references.

Claim 5 is a multiple dependent claim which references claims 1 and 4. Claim 6 is a dependent claim that references claim 5. Both of these claims are believed to be patentable for the same reasons as the claims from which they depend.

Claim 7, a re-presented independent version of original claim 10, is a method claim which specifically recites a step of terminating determination of a trend in network performance if a set of samples fails to meeting predefined threshold requirements. As noted above in the discussion of claim 1, neither Brichta nor the secondary references teaches a step of terminating trend determination if a set of samples fails to meet predetermined criteria. Claim 7 is believed to be patentable over the art of record.

Claim 11 is dependent on claim 7 and is considered patentable for the same reasons as that claim. Moreover, claim 7 defines the "predefined threshold requirement" in terms of a

relationship between the standard deviation and the mean of the set of samples. Neither Brichta nor the secondary references teaches or suggests using the relationship defined in claim 11.

Claim 12 is written as a system claim but includes specific recitations of logic for determining the standard deviation and mean of each obtained set of samples, logic for determining the ratio of the standard deviation and mean of each obtained set of samples, and logic for terminating any prediction of a violation of network performance requirements where the obtained set has a ratio exceeding a predefined threshold. None of cited references discloses logic for performing the recited functions.

Claim 19 is basically a program product claim that specifically recites an operation of ignoring any set of samples which fail to meet predetermined criteria. None of the cited references teach or suggest ignoring an entire set of samples of the set fails to meet predefined criteria.

It is submitted that the claims remaining in the application define patentable subject matter over the art of record.

Respectfully Submitted,



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